

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

VOLUME 6 OF 20

UNITED STATES OF AMERICA

EP:13-CR-0370-DG

v.

EL PASO, TEXAS

MARCO ANTONIO DELGADO

May 17, 2016

**STATUS HEARING**

THE HONORABLE DAVID C. GUADERRAMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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2                   (Proceedings begin at 9:57 a.m.)

3                                   \* \* \* \* \*

4                   (Open court.)

5                   THE COURTROOM DEPUTY: EP:13-CR-370, Marco Antonio  
6                   Delgado.

7                   THE COURT: I'd ask for announcements, please.

8                   MS. KANOF: Good morning, Your Honor. Debra Kanof,  
9                   Anna Arreola and Jose Gonzalez for the United States.

10                  THE COURT: Good morning to all of you.

11                  MS. FRANCO: Good morning, Your Honor. Maureen Franco  
12                  and Erik Hanshew on behalf of Mr. Delgado. We're ready.

13                  THE COURT: All right. Good morning to both of you.

14                  All right. I wanted to have this status hearing, so I  
15                  can get a better grasp on what actually happened in regards to  
16                  that subpoena and then where I'm going to go from here.

17                  The first thing I want to know is because I guess I  
18                  can assume that the subpoena was actually served on Mr. Gireud  
19                  in Federal Court, apparently those returns aren't filed and  
20                  courts are left to guess, I guess, if subpoenas have been  
21                  served.

22                  MS. FRANCO: Yes, Your Honor. It was served on one of  
23                  Mr. Gireud's attorneys, Rene -- well, had represented him the  
24                  past -- Rene Ordoñez had accepted service that said he did not  
25                  represent him with regard to that compliance with the subpoena,

1 but he did accept service and gave it to Mr. Gireud.

2 THE COURT: All right. So if I hold a show cause  
3 hearing to hold Mr. Gireud in contempt for failing to comply  
4 with a subpoena, is that sufficient that you serve someone that  
5 used to represent him in the past and then we go on that?

6 MS. FRANCO: Well, Your Honor, he accepted service on  
7 his behalf. And of course, Mr. Gireud has not filed anything  
8 seeking that he didn't receive proper service of it, but  
9 federal rules are different on the service of subpoena. I mean  
10 pretty much anyone can serve a subpoena on someone.

11 THE COURT: Okay. So then because he, I'm thinking  
12 from your pleadings, he showed up at the Government's office,  
13 and from the Government's response that that in fact is true,  
14 that he showed up at the Government's office with these  
15 documents, so I guess I can safely assume that he was served.

16 MS. FRANCO: Yes, sir.

17 THE COURT: All right. So then I can set him for a  
18 show cause.

19 If you give me an affidavit telling me all of these  
20 things you just told me that I can use for my show cause, I'll  
21 serve him with a show cause as to why he should not be held in  
22 contempt for failing to comply with the directive.

23 Now, I looked at the subpoena. Was the Court's order  
24 attached to the subpoena? Because that subpoena doesn't say  
25 anything.

1 MS. FRANCO: Let me check, Your Honor.

2 Yes, Your Honor, it was.

3 THE COURT: So all of those documents are then  
4 attached to that cover sheet and then that's what's served on  
5 the defendant.

6 MS. FRANCO: Yes -- on the witness, Your Honor.

7 THE COURT: I'm sorry, on the witness. And he reads  
8 through that order and figures out what he's supposed to do?

9 MS. FRANCO: Yes, sir.

10 THE COURT: Okay. All right. So I know that's where  
11 we're at.

12 Now, from reading your pleadings, and I saw all of the  
13 things you raised, the thing that concerned me was that you're  
14 alleging that Mr. Gireud shows up with, let's say, 20 different  
15 documents to the Government's office. The Government looks  
16 through them and says, well, here's 15 we'll give to the Court.  
17 These five don't -- aren't responsive, so take those back, you  
18 don't need to produce those. That's kind of what -- something  
19 like that was what you were alleging?

20 MS. FRANCO: It's possible, Your Honor. I mean that's  
21 the problem with the Government interjecting itself into this  
22 subpoena process is that we're not sure exactly what happened.

23 THE COURT: Right. Well --

24 MS. FRANCO: I mean it wasn't 20 documents, Your  
25 Honor. I mean, I don't know --

1 THE COURT: Oh, I know. I'm just using that as --

2 MS. FRANCO: It was 300 pages and that they tried to  
3 say that they perused it, but they were able to find a tax  
4 return in the middle of it, and so -- I mean, obviously, they  
5 made copies of it.

6 THE COURT: All right. You're way past me right now.

7 MS. FRANCO: Okay.

8 THE COURT: I'm just trying to get the basics done.

9 MS. FRANCO: Yes, sir.

10 THE COURT: All right. There's nothing that prevents  
11 a witness from getting subpoenaed and going to the Government,  
12 right? I mean, he could've gone to the Government, showed them  
13 the documents and then come here to the court complying with  
14 the subpoena --

15 MS. FRANCO: Yes.

16 THE COURT: -- and violated no rule.

17 MS. FRANCO: Correct, Your Honor. He didn't.

18 THE COURT: Right, because that's why I'm going slowly  
19 because I'm trying to see what actually happened.

20 MS. FRANCO: Yes, Your Honor.

21 THE COURT: So you're saying that he showed up with  
22 "X" amount of documents, but then only "X" minus "Y" was  
23 delivered to the Court. "Y" was then returned with Mr. Gireud  
24 back to his house.

25 MS. FRANCO: I don't know, Your Honor.

1 THE COURT: I'm reading -- I'm talking about your  
2 pleadings.

3 MS. FRANCO: Well, Your Honor, I don't think that's  
4 the position that we took.

5 THE COURT: Tell me what it is.

6 MS. FRANCO: Thank you, Your Honor, I will.

7 Our position is that through a series of telephone  
8 conversations that Mr. Gireud had with the case agent and with  
9 the Government, he was given legal advice as to how to comply  
10 with the subpoena. He was told not to substitute items that  
11 were not specifically requested.

12 THE COURT: The only thing I want to know right now is  
13 if he showed up with documents, left some and went home with  
14 some.

15 MS. FRANCO: That's why we would need to have an  
16 evidentiary hearing to find out. We don't know. That's the  
17 problem.

18 THE COURT: But that's what you are alleging or at  
19 least wanting me to believe that's what happened.

20 MS. FRANCO: Your Honor, what we wanted the Court to  
21 be concerned about is to determine whether or not that indeed  
22 happened. We don't know, because all we know is that  
23 Mr. Gireud showed up with some documents and Ms. Kanof received  
24 those documents and some documents were returned to the Court  
25 pursuant to a subpoena.

1           We had requested several documents that were not  
2       returned by Mr. Gireud either, because he was instructed by the  
3       Government, well, they don't exist, you can't present them or  
4       that he tried to substitute documents in and they told him not  
5       to.

6           THE COURT: Okay. So that's what I'm talking about.

7           MS. FRANCO: Yes, sir.

8           THE COURT: That's the "Y."

9           MS. FRANCO: Yes, sir.

10          THE COURT: The documents that he had that weren't  
11       turned over.

12          MS. FRANCO: Correct. That's our impression, Your  
13       Honor.

14          THE COURT: All right.

15          So let me hear from Ms. Kanof.

16          Is -- are you saying she is the one that dealt with  
17       Mr. Gireud? He's the one that has this knowledge?

18          MS. FRANCO: Yes, Your Honor.

19          THE COURT: Ms. Kanof, tell us what you think  
20       happened.

21          MS. KANOF: On Wednesday afternoon or I guess it was  
22       early afternoon on Wednesday, April 6th, I was sitting in my  
23       office and AUSA Arreola came to me and said that Agent Fry had  
24       called her and said that Mr. Gireud wanted to talk to us. We  
25       don't know what it was about.



1           We placed a conference call from my telephone and  
2           Mr. Gireud said that he had received a subpoena. We're aware  
3           he had received this subpoena because Mr. Fry had told us that  
4           already.

5           The first thing he said was didn't you give the  
6           defense all of the documents --

7           THE COURT: This is Mr. Gireud?

8           MS. KANOF: It was a conference call with Mr. Fry --  
9           didn't you give all of the documents that I gave to you to  
10          them? And I said, yes, of course we did. And he said, well,  
11          most of what he's asked for I already gave you. So, do I have  
12          to give it to them again?

13          Prior to that, I had said, did you call Mary? Mary  
14          Stillinger was his attorney until the middle of last week. I  
15          had been in constant communication with her and I had e-mails.  
16          Ever -- the case has been reset eight times. Every time it was  
17          reset, I would tell her. She's given us permission to talk to  
18          him in her absence, both for the agents and the AUSA.

19          THE COURT: Ms. Stillinger gave someone in your office  
20          permission to talk to Mr. Gireud.

21          MS. KANOF: Correct. In her absence, she gave the  
22          AUSAs and the case agent permission that -- from the very  
23          beginning, she gave to Ms. Fielden and then reiterated to us  
24          that we're free to discuss with him. He is my witness for  
25          preparation and since the case has been set so many times, I

1 had engaged in preparation of him more than one time, never  
2 alone, always with other people present.

3           During this conversation, he -- I first asked him, did  
4 you talk to Ms. Stillinger? He had, according to Agent Fry, he  
5 had spoken with him before and Agent Fry had said you need to  
6 call your lawyer. He said -- my understanding is that he told  
7 Agent Fry that Rene Ordoñez wouldn't discuss it with him,  
8 because he was only his lawyer for the civil case, the lawsuits  
9 that are ancillary to this, and that he had tried to get ahold  
10 of Mary Stillinger and could not. On more than one -- one  
11 occasion, Agent Fry and AUSA Arreola had said, tell him to call  
12 his lawyer.

13           Now, in this conversation, we were caught off guard.  
14 We don't know what it was going to be about and he started  
15 talking about this. The first thing I said is, did you call  
16 your lawyer? I tried many times. I have not gotten a  
17 response.

18           Then he asked whether or not we had provided the  
19 documents, and I said, yes. Well, then why do I have to give  
20 it to them again? Because the subpoena says you do. And then  
21 he said, well, some of the things don't even exist. Well, if  
22 it doesn't exist, you can't very well give it to them.

23           In the middle of the conversation, he related that his  
24 daughter was getting married that Saturday. He was very, very  
25 distressed and concerned that he do the right thing. He said

1 he had actually missed out on some of the festivities and  
2 participation, because he was spending so much time to respond  
3 to items he didn't understand or may not exist.

4 At one point, he -- well, during the process,  
5 Ms. Arreola or either Agent Fry or Ms. Arreola says, you have  
6 the subpoena. I e-mailed it to you. I didn't realize that.  
7 He e-mailed it to both of the AUSAs, but neither of us bothered  
8 to open it. I popped it open to continue discussing it with  
9 him.

10 When I popped it open, I took a look at it and  
11 realized it was in violation of Rule 17(c). Not only --

12 THE COURT: Is that the discovery issue you were  
13 talking about where you're circumventing discovery?

14 MS. KANOF: I'm sorry?

15 THE COURT: Was that the issue raised about  
16 circumventing the discovery?

17 MS. KANOF: Yes, Your Honor. Oddly enough, about two  
18 weeks before that when I was out of town, I had received a  
19 request from one of our (indiscernible) on a motion to  
20 suppress. It was a little fresh in my mind and I took a look  
21 at it and he -- the third thing he said to me was I don't have  
22 this item. He identified one item. I don't recall. And we,  
23 of course, had discussed it and none of us recall what item he  
24 pointed to, because we're trying to get through this, and he  
25 said I don't have this item, but I've been searching. Maybe I

1 have something that's related to it. And that's when I said  
2 you just are supposed to comply with the subpoena. Don't  
3 substitute things that are not asked for.

4 He said can I bring them to you so that you can make  
5 sure that I did the right thing, that I complied with the  
6 subpoena? And I told him that I would review it with him on  
7 Monday, the day that it was due, April the 11th. Before that  
8 was a possibility, he called me early Monday morning and he was  
9 crying. He was very upset about having lost his mother.  
10 Excuse me. He is a very kind man and he spent a long time  
11 telling me about his mother and that she was so kind that she  
12 had waited until his daughter got married to die, because she  
13 had died on Sunday after the wedding. I told him that -- I  
14 told him if he brought the documents to my office, I would walk  
15 across the street with him and go to the court. And he did  
16 present them and -- and he said he needed to leave to fly to  
17 Torreón to take care of the things for his mother. I said  
18 bring the documents to me. I'll make sure the Court gets them.

19 About ten o'clock in the morning -- I even told him  
20 just drive by, call me and I'll run out and pick them up. I  
21 don't want you to have any more stress.

22 THE COURT: This was on Sunday?

23 MS. KANOF: Monday, the day they were due.

24 And he called me on Monday -- no, I'll come in. We'll  
25 meet you in the lobby. We met in the lobby, gave condolences,

1 spoke about his mother, handed the package, went upstairs. I  
2 handed the package to my legal assistant to make copies. It  
3 took her a little while -- meticulous folders for the Court --  
4 but immediately prior to that, I put it on -- pulled out the  
5 pullout on the side of my desk. Ms. Arreola stood to my left.  
6 And we literally took the corner and went like that to see if  
7 they were voluminous.

8           It jumped out at me because I was considering filing  
9 17(c) quash that there was a tax return and it also jumped out  
10 at me that it was a personal -- so I looked at it. It was a  
11 1040. The subpoena had not requested personal 1040s. It had  
12 requested from FGG. And this was a personal 1040. We are  
13 trained in our office that if anything that has personal  
14 identification in it like Social Security numbers, dates of  
15 birth have to be redacted. I knew I couldn't tamper with the  
16 document, so I instructed my assistant take that, return, put  
17 it in an envelope marked PPI, personal identification, personal  
18 tax record. Even though I knew it was not compliant to the  
19 subpoena, I didn't remove it and put it back in where it came  
20 from so that nothing has been altered.

21           After a little while, after she had -- she made two  
22 copies, one for myself and AUSA Arreola, we had read the order  
23 before we did anything. We assure that the order was not  
24 sealed, the subpoena was not sealed.

25           I will tell the Court that before this occurred,

1 Matthew Herrington, H-E-R-R-I-N-G-T-O-N, counsel for  
2 Mitsubishi, had called me and had the identical conversation  
3 with me.

4 Mr. Herrington had called when he received the  
5 subpoena, which he also sent to the Government, and said you --  
6 didn't you give the disk we provided to the defense? And I  
7 said, yes, we did. And he said, well, pretty much everything  
8 we're asking for we may have, it's on that disk. And I said,  
9 well, you know, what can I tell you, you to give it to them.  
10 And he said, I'm thinking of making a motion to quash.

11 In lieu of that, that's what we gave to the Court,  
12 sealed. He instead identified from the disk that was provided  
13 to us by Mitsubishi and then directly to the defense without  
14 any deletions the numbers of most of the items that had been  
15 requested.

16 Rule 17 subpoenas are not a discovery tool and it's an  
17 extreme measure and a showing has to be made to the Court. I  
18 felt very strongly when I saw Mr. Herrington's subpoena that  
19 that -- and Mr. Herrington and I did discuss it -- that there  
20 had been no compliance of any of the four prongs of the United  
21 States Phoenix or Nixon, as adopting (indiscernible.)

22 And so regardless when Gireud said that to me, I had  
23 already heard it. And so on the Monday when -- after the  
24 copies had been made, kind of for about an hour or so -- I was  
25 actually working on a different case -- and that morning

1 Mr. Gireud was very upset that he hadn't had an opportunity to  
2 go through the documents to make sure he was in full  
3 compliance. He -- and because of his daughter's wedding felt  
4 like, you know, I want to make sure I do the right thing, you  
5 know, I need more time. And I said don't worry. Don't worry.  
6 I'll tell the Court that, you know, what happened with your  
7 mother and that you want more time.

8 And I had considered just calling the Court and  
9 communicating this, but decided for full disclosure so defense  
10 counsel would be aware of what happened, that I would do it in  
11 a motion. I wasn't doing it as his counsel as an officer of  
12 the Court to communicate something because he had no other  
13 alternative.

14 So I quickly drafted a motion for extension of time to  
15 comply with the subpoena explaining to the Court what had  
16 occurred. And about an hour later, the U.S. Attorney Richard  
17 Durbin called me and told me that he had received a call from  
18 the Federal Public Defender, who was very angry, who was  
19 accusing the Government of having engaged in a legal  
20 relationship with Mr. Gireud and having represented him as  
21 counsel.

22 He indicated to me that he had asked Ms. Franco, what  
23 do you want? What's the remedy? What will make you happy? He  
24 said that she wanted us to withdraw the motion. She wanted us  
25 to explain what happened and explain what we did. But most

1       importantly, she wanted us to give them a copy of the  
2       documents.

3               So when I hung up the phone, I immediately told my  
4       legal assistant to run up to FPD before 5 o'clock -- this is  
5       like 4:30 -- and give them my copy, which she did before close  
6       of business. Then Mr. Durbin told me to file a motion to  
7       withdraw the motion for extension of time and explain why.

8               That night after having a discussion with Ms. Arreola,  
9       I called -- I am supervised directly by the Chief of Criminal,  
10      Ms. Leachman. She's also professional responsibility officer.  
11      I won't disclose, because I think it's privileged what I  
12      discussed with her, but she directed me to be a little more  
13      specific and file an amended motion to withdraw. And what she  
14      actually said was draw a footnote. Look, let's -- a full  
15      disclosure. I'll do it in the body and I won't tell you what  
16      advice she gave me as far as legal advice, so I did that.

17              The next morning, I wrote a little more in depth to  
18      withdraw the conversation that I had had with Mr. Gireud to be  
19      a little more complete. And that's basically what happened.  
20      Every document that was turned over to the Government to go to  
21      the Court was provided. Nothing was deleted, nothing was added  
22      and nothing was read.

23              In fact, I will tell the Court I still have not looked  
24      through those documents, because having read the subpoena and  
25      talking to Mr. Gireud, I know they are just repetitious. It



1 was very clear that some of the things that were requested just  
2 don't exist; copy of the website, are totally irrelevant and  
3 improper.

4 Because of the dust-up, I did not file a motion to  
5 quash. I just didn't want to create any more issues. But I  
6 did have the opportunity and did submit to the authors of the  
7 response what I had planned to submit to the Court in order to  
8 quash that subpoena, and that's --

9 Have I left anything out?

10 (Sotto voce conversation.)

11 MS. KANOF: I just want to point out to the Court two  
12 things; one, Ms. Arreola and Agent Fry were present during  
13 every word that came out of my mouth to Mr. Gireud and, two,  
14 before writing the amended motion, Chief Gonzalez came into my  
15 office. Ms. Arreola and I wanted to make sure we were very  
16 accurate about what I told Mr. Gireud. And we were calling  
17 Agent Fry. Agent Fry lives in Arizona. We were counseling him  
18 to ask his recollection of what I said. So -- for fairness and  
19 completeness -- Jose Gonzalez walked into the office and we  
20 said, could you please stay and be a witness to the  
21 conversation we have with Agent Fry about the conversation I  
22 had with Gireud? So AUSA Gonzalez stayed and listened to Agent  
23 Fry's rendition of that conversation that occurred on April 6th  
24 between myself on conference call with Agent Fry and  
25 Mr. Gireud, with Ms. Arreola present in my office, and that's

1 basically what happened.

2 THE COURT: All right. Thank you, Ms. Kanof.

3 All right. Did you have a response?

4 MS. FRANCO: Your Honor, I apologize for my voice.

5 I'm losing it for some reason, so, hopefully you'll be able to  
6 understand what I'm saying.

7 Your Honor, with regard to what Ms. Kanof has related  
8 to the Court, it's very clear that she did provide legal advice  
9 to Mr. Gireud. He calls up first case agent. I got the  
10 subpoena. I don't know what it all means. What do I do with  
11 it? He then reaches out to Ms. Arreola, who says, call your  
12 lawyer, the only response that should have been given to  
13 Mr. Gireud.

14 Your Honor, just to correct something, Ms. Stillinger  
15 told us she did not represent Mr. Gireud, because we sent the  
16 subpoena to her and she's the one that told us about  
17 Mr. Ordoñez. So at that point in time in March, she said she  
18 did not represent him or we wouldn't have been going through  
19 her.

20 For whatever reasons, his wife, daughter getting  
21 married, the unfortunate death of his mother, he obviously sees  
22 the AUSA office as his attorney, because he's asking for advice  
23 on how to comply with the subpoena at issue. The simpler and  
24 ethical thing, he could talk to a lawyer. If he didn't or  
25 couldn't reach his lawyer, then it was up to him to comply with

1 a subpoena and come to the court to explain what it was.

2 By him indicating to Ms. Kanof that there was  
3 something that was somewhat on point to what we were asking for  
4 in the subpoena and her telling what's directly on point, don't  
5 present it, it shows that she interfered with the issuance of a  
6 subpoena that was up to the Court to decide whether or not that  
7 response that he would have given would have been compliant  
8 with your subpoena order that you issued.

9 I think that she did ultimate representing of him when  
10 we agreed to accept those documents and then she filed a  
11 document with the Court asking for more time for him to comply  
12 with it and for her to potentially do a motion for quash, which  
13 I think promised standing with regard to that, because the  
14 subpoena went to a third party, at least we thought not to his  
15 attorney, which is apparently she became during this process.

16 So I think with everything that's happened, Your  
17 Honor, by what she's told the Court here today, she definitely  
18 created an attorney-client relationship with this witness.

19 MS. KANOF: May I respond to a few factual  
20 misrepresentations?

21 AUSAs never spoke to -- (indiscernible) told Mr. Fry  
22 to tell Mr. Gireud to call his lawyer. That's number one.

23 Number two, after this incident, I called Mary  
24 Stillinger to ask her, do you still represent him? And she  
25 did. In fact, I have an e-mail from her husband. What Mary

1 told me was I don't know whether he tried to call me or not. I  
2 don't give my client my -- certainly, I give them John's, her  
3 legal assistant. She said I'll have to ask John. She did say  
4 something about Mr. Gireud not having paid her and then she  
5 said I'll have John talk to him. I got an e-mail from John  
6 Godinez saying that he had talked to Mr. -- he did talk to  
7 Mr. Gireud.

8 I received a phone call, and I think it's in the  
9 footnote of our response time, last week from a familiar Colin  
10 Hobbs, who's an attorney in San Antonio. So, Colin Hobbs told  
11 me that he was beginning his representation on that day, and on  
12 that day Mary Stillinger's representation terminated. So I  
13 spoke with Mary Stillinger and she agreed. She said, you  
14 understand I am no longer -- she also sent me an e-mail -- you  
15 understand I'm no longer the attorney. And I said, as of when?  
16 And she said, as of today. And that was last week.

17 THE COURT: All right. Well, this is just a status  
18 hearing. Okay. I'll let you put on whatever evidence you want  
19 to put on Thursday after our final judge's conference, if you  
20 have witnesses, whatever you want to do, make whatever record  
21 you want to make, that's the time to make it.

22 Right now I wanted to find out about if Gireud was  
23 actually served or not, what exactly he was served with. And  
24 if you give me the affidavit, I'll schedule him for a show  
25 cause hearing and he can show me why I shouldn't hold him in

1 contempt for not complying with the subpoena. I think he had  
2 plenty of opportunity to comply. He chose to go see the  
3 Government. I don't think there's anything wrong with that.  
4 He can certainly do that, what he wants. This is America. And  
5 so I don't see anything problematic with that. And I'll give  
6 you an opportunity to put on whatever evidence you want to  
7 have.

8 I think that removing a member of the other branch of  
9 government, that's a big deal, and so I would read the case  
10 that you provided. I just barely read Ms. Kanof's response  
11 this morning. But show me whatever cases you have where a  
12 court has removed a prosecutor from a case and the reasons for  
13 that. Maybe this wasn't perfect what happened, but it's -- I'm  
14 not at this point as offended as you are.

15 MS. FRANCO: Right.

16 THE COURT: So I'm going to give you the opportunity  
17 to show me how I should take that kind of offense where I'm  
18 going to remove Ms. Kanof from the case, who's apparently been  
19 with this case for the longest time, remove all of the United  
20 States attorneys from the Western District of Texas. Show me  
21 some authority and reasons why I would do something like that.

22 Here's the thing that concerned me is that the  
23 Government received "X" amount of documents, sifted through  
24 them, provided "X" minus "Y" to the Court and provided "Y" back  
25 to Mr. Gireud. Ms. Kanof said that didn't happen.

1 MS. FRANCO: Right. I guess we'd have to get them  
2 from Mr. Gireud if that's the case.

3 THE COURT: I'll give you the opportunity right after  
4 our judge's conference of everything you want to put on, any  
5 witnesses, whatever, at that time.

6 MS. FRANCO: Okay.

7 Your Honor, since we're here at a status conference,  
8 and I know that you need to start working or bringing in a  
9 jury, there are some recent developments in the case you need  
10 to be aware of that's happening that could potentially affect  
11 this trial date next week.

12 The contract FGG, which is the company that  
13 Mr. Delgado was involved in with Mr. Gireud, had entered into a  
14 bid agreement or contract with the electric company in Mexico.  
15 That's the CFE contract. And it's a long contract with a lot  
16 of attachments to that contract.

17 THE COURT: Is it in English or Spanish?

18 MS. FRANCO: It's in Spanish, Your Honor. The  
19 Government only translated two of the attachments to the  
20 contract and so we have a problem now because the entirety of  
21 the contract should have been translated from Spanish to  
22 English.

23 I think the Government's position is that those other  
24 attachments aren't necessary for their case. Our argument is  
25 Rule 106, which is a rule of completeness, if they're relying

1 on that contract, the contract is read as a whole, not just  
2 cherry picking provisions out of the -- that account with the  
3 Mexican government and our client Mr. Delgado. It's  
4 voluminous.

5 THE COURT: Rule 106 is an evidentiary rule that deals  
6 with admitting evidence, whether or not they should be putting  
7 together that under the rule of contracts, but if they produced  
8 the exhibits and you want the entire document produced, it's  
9 your obligation to provide the translated parts that you want  
10 to admit.

11 MS. FRANCO: My point is back to the Court, if you  
12 will with all due respect, is that improperly shifts the burden  
13 to us since the Government is the one who's prosecuting  
14 Mr. Delgado. And so if they're going to offer in this contract  
15 as proof of his fraud, because of his compliance or fraudulent  
16 activity with regard to that contract, then the entirety of the  
17 contract should be submitted to the jury and to the Court for  
18 consideration and that has not been done. And it's voluminous.  
19 It's probably another 500 to 1,000s of pages of documents that  
20 would need to be translated. If the Court is to rule it's on  
21 us to do it, I haven't done it. I would need a court certified  
22 interpreter and that can't be done by Monday.

23 THE COURT: I can't argue with that. I can tell you  
24 that the rule of optional completeness is the rule of optional  
25 evidentiary rule contract law who admits what and when. And so

1 I'm not changing any burdens on anybody. That's an interesting  
2 argument, which certainly you can make, but the rule is the  
3 rule. They produce it. And if you have something that should  
4 come in contemporaneously, then you submit it. If you need  
5 time to translate the documents, if you need a certified  
6 interpreter -- when did you get those documents?

7 MS. FRANCO: Well, Your Honor, we've had them. We  
8 haven't got all of the attachments until relatively recently,  
9 because all of this stuff has been trickling in. So I think  
10 now we have a complete set as a result of the subpoenas that  
11 were served, and AUSAs and Mr. Gireud, that we now have the  
12 complete set. It hasn't been that long that we've had the  
13 complete set. The last time we were in court, the Government  
14 had indicated they were going to be dropping translations on  
15 us. I don't --

16 THE COURT: Approximately 5,000 documents. That's how  
17 much that --

18 MS. FRANCO: 5,000.

19 THE COURT: -- that contract is page-wise?

20 MS. FRANCO: I couldn't know. I think that 5,000 is  
21 kind of a lot; 3,000 pages is a lot. It's a lot.

22 THE COURT: There was a contract that was 3,000 pages.

23 MS. KANOF: It's about 150 pages. We produced it on  
24 March 20th, 2014. It was signed for by handwriting Sandra,  
25 last name Duffy, maybe from the Federal Public Defender's



1 office.

2 MS. FRANCO: They're misunderstanding what I'm saying.  
3 I'm talking about all of the Mexican -- the attachments, the  
4 exculpatory, those. That's what I'm talking about, which were  
5 attachments to the contract that are referenced in the  
6 contract. They're in the last page of the C -- yes, we've had  
7 all of that stuff, but we haven't had the translations of all  
8 of the -- I'm sorry -- the attachments to that contract. And  
9 they're attachments A through W. They have translated S and T,  
10 but not any of the other letters of the alphabet.

11 THE COURT: When did you get the anexos (Spanish)  
12 or --

13 MS. FRANCO: Let me check on those, Your Honor.

14 MS. KANOF: Your Honor, I can respond.

15 This FedEx package is the entire request from the  
16 MLAT.

17 THE COURT: I'm sorry, the request for what?

18 MS. KANOF: M-L-A-T -- it's all caps -- stands for  
19 Mutual Legal Assistance Treaty. It has all of the anexos  
20 except Anexo W, which has -- I think is three pages long -- no,  
21 I'm sorry, Anexo W is 32 pages long. And Anexo W is also in  
22 both English and Spanish. And this is the package that was  
23 provided. We received it March 12th of 2014. And it's the one  
24 I referred to you that was picked up by FPD in April.

25 MS. ARREOLA: March 20th.

1 MS. KANOF: Oh, March 20th.

2 We've pretty much turned over everything we do -- we  
3 got it, but the anexos are part of the MLAT production. And  
4 what has trickled in are translations and --

5 THE COURT: Did the FPD represent him in 2014?

6 MS. KANOF: Yes.

7 We'll get you the exact date, Your Honor.

8 But they did sign for -- yes, this was actually  
9 produced -- the MLAT production which is the contract with all  
10 of the anexos. It was Anexo A through V, because Anexo W  
11 didn't come through the MLAT. We got it from Anexo W from  
12 Mitsubishi. And so that -- the Mexican government didn't  
13 provide it to us.

14 THE COURT: Did not provide it?

15 MS. KANOF: They did not. It did not come in the  
16 MLAT. And so we gave them the Anexo W when we did get it. And  
17 I don't remember when that was, but it was quite sometime ago.  
18 It was --

19 THE COURT: And you say that's three pages?

20 MS. KANOF: It's 32 pages.

21 THE COURT: Oh, 32 pages.

22 MS. KANOF: 32 pages.

23 And it's -- there're several versions of it. We've  
24 provided all of the versions that we received. And it's  
25 called -- Anexo W is called -- basically, it's a document --

1 it's a technical document in which Mitsubishi insisted that it  
2 be included in the subcontract, because they insisted that  
3 every one know that their generators did not meet the  
4 specifications of the bid. The generators were preexisting.

5 They were provided to them on March -- oh, the FPD  
6 became counsel --

7 THE COURT: Ms. Arreola can tell us if she wants. I  
8 mean --

9 MS. KANOF: Oh, I asked her did she want to and I  
10 don't think she did.

11 As to the -- his counsel, March -- March 19th of 2014.  
12 Huh?

13 And we produced them the next day.

14 THE COURT: All right.

15 Ms. Franco, do you agree with that?

16 MS. FRANCO: Mr. Hanshew was talking to me, Your  
17 Honor, so I don't --

18 THE COURT: Oh, I'm sorry.

19 MS. FRANCO: I'm sorry.

20 THE COURT: She said -- she's saying that you-all  
21 became counsel on -- in March of 2014, and the next day that  
22 they provided that -- everything that's included in that FedEx  
23 envelope, which included Anexos A through --

24 MS. KANOF: V, Your Honor.

25 THE COURT: -- V, and then W --

1 MS. FRANCO: Well, Your Honor --

2 THE COURT: -- and W came at a later date.

3 MS. FRANCO: At a later -- right.

4 And during the course of our representation,  
5 Mr. Delgado, we had asked for the specks that were part of the  
6 contract and that was not included in the MLAT. And so they --  
7 you know, these are the things that have been coming in.

8 But you know it's interesting that they have the  
9 original MLAT that has the entirety of the contract, but they  
10 don't -- but they didn't translate the entirety of the  
11 contract. And, yet, they want the Court, under their exhibits  
12 to introduce a modified MLAT, which is I guess now is going to  
13 exclude the entirety of those -- of the contract, leaving out  
14 the ones that they didn't -- that they didn't translate.

15 But Your Honor, they have not been translated by a  
16 certified translator, the other amendments to it. I think that  
17 we're going to be absolutely ineffective, because this is  
18 important to our case to be able to use the other parts of the  
19 contract. When we were cross-examining Mr. Gireud, he  
20 referenced CFE during the trial. And it's our error, quite  
21 frankly, that we assumed and you know said anything about that,  
22 that those -- that the entirety of the contract and the  
23 attachments would have been provided to us.

24 Part of the confusion is that Ms. Kanof was referring  
25 to things that had trickled in like the translations is because

1 Mr. Hanshew and I can read Spanish, you know, we can read what  
2 these are, but I'm not going to testify and tell the jury what  
3 it is and I can't cross-examine that witness on it and that's  
4 part of the problem. So recently, the other -- so there's that  
5 issue.

6 The other issues are that they provided some *Brady* and  
7 *Giglio* to us, which is probably five or six pages that's  
8 Spanish. I asked if they were going to translate that for us  
9 and they said, no. So there's that.

10 And very recently, Mr. Pimentel from the first case  
11 has now risen his head in this case and has now changed the  
12 theory of the Government's case as to how this contract was  
13 entered into within FGG. Mr. Delgado needs to be -- CFE is now  
14 claiming that bribery was involved in it.

15 On Friday afternoon, Mr. Jose Luis Gonzalez gave us  
16 the contact information for Mr. Pimentel, so that we can talk  
17 to him to find out about this impeachment material with regard  
18 to Mr. Gireud and some of the other potential individuals that  
19 the Government is going to have. We need the opportunity to  
20 track him down. We do have his phone number.

21 THE COURT: When did you get that notice?

22 MS. FRANCO: On Friday. And we're in the process of  
23 trying to locate him, but the Government also told us he's in  
24 the process of moving, so he's sort of a moving target. And if  
25 we do decide we want to use him, we'll have to have them served

1 again and ask for a subpoena for him, which is not going to be,  
2 you know, like that. It wouldn't be quick. So...

3 THE COURT: Do I have to get him counsel? Do I have  
4 to have counsel if you subpoena him?

5 MS. FRANCO: I don't know on that, Your Honor, but...

6 THE COURT: I'm trying to remember from the other  
7 case. Pimentel wasn't -- it was the young guy --

8 MS. KANOF: He's the informant.

9 THE COURT: -- from UTEP.

10 MS. KANOF: I can respond to all of this. Would you  
11 like me --

12 What happened was when it got to be close to 14 days,  
13 the Government started providing *Brady* and *Giglio* on 2014, as  
14 soon as we learn about it, but at the time to be complete,  
15 Ms. Arreola recalled that during debriefing, Pimentel knew  
16 Delgado very well. They were friends. And that during  
17 debrief, Pimentel made a comment about Gireud having something  
18 to do with a bribe in this case. So we decide to call him to  
19 clarify it, so that -- we never discussed it because it didn't  
20 have anything to do with that case. And Frankly, I didn't know  
21 about this case at the time.

22 And so we made that phone call in participation of our  
23 deadline. We made it with Mr. Gonzalez present, two agents  
24 present. And what Mr. Pimentel told us does not in any way  
25 change, shape or form, change the Government's theory. The

1 Government did not charge Mr. Delgado with a violation of the  
2 Foreign Corrupt Practices Act. Of course the Government did  
3 not charge Mr. Delgado with obtaining the contract by bribe.  
4 The Government recognizes that's how you get contracts in  
5 Mexico and did not -- that's not the gravamen of the  
6 indictment. He's charged with a bunch of lies to steal money  
7 from the contract. And Mr. Gireud, I think the testimony will  
8 show, didn't know that was happening.

9 But we do have a *Brady* obligation to the extent that  
10 it could possibly be considered *Brady* or *Giglio*. We called  
11 Mr. Pimentel and he told us that he recalled that Mr. Delgado  
12 sent Mr. Pimentel and Mr. Gireud to an individual named Nervo,  
13 N-E-R-V-O, Vargas. He's not the actual head of the electrical  
14 union, but he's the functional head, very, very powerful man.  
15 If he doesn't send his workers to the power plant, it doesn't  
16 get built. And Mr. Pimentel's family had been friends with  
17 Vargas. Delgado met Vargas and became very close to  
18 Mr. Pimentel and said Mr. Vargas does work by bribes.

19 So he said Mr. Delgado sent him and Mr. Gireud to  
20 Mr. Vargas to find out what he wanted to get the contract. So  
21 we -- he also -- so we brought Mr. Gireud in to ask him about  
22 it on Sunday, again, with everybody present. And in fact,  
23 Mr. Gonzalez was the lead inquirer -- inquirer about it. And  
24 so Mr. Gireud did admit he assumed that that was the way they  
25 had to get a contract. He not only said that, he didn't recall

1 what specifically Mr. Pimentel said, specific instance, but he  
2 did say that, you know, he knew that that's what Delgado was  
3 doing. He turned a blind eye to it. But there was a specific  
4 instance where they were in Las Vegas where Mr. Vargas goes and  
5 asked Mr. Gireud for \$5,000 for a bribe, and Mr. Gireud said,  
6 no, because he didn't have \$5,000.

7 So it has nothing to do with the Government's theory  
8 of the case. It was merely an obligation for impeachment.  
9 They can ask him, Mr. Gireud, till the cows come home, bribe  
10 the Mexican Government. I don't care. It doesn't have  
11 anything to do with what is charged with the indictment, how  
12 the contract -- everybody looks at that contract and this must  
13 be a bribe because the other two bidders were General Electric  
14 and Siemens of Germany.

15 Now, FGG, which was recently formed in a corporation  
16 out of El Paso with one member, Mr. Gireud and -- and to --  
17 Your Honor, Mr. Delgado could have gotten that contract, you  
18 know, a kindergartner would have known it was a bribe. It  
19 isn't a surprise to anybody nor believed or understood or  
20 turned a blind eye that that's how they were getting contracts.  
21 That's what Mitsubishi thought, I am sure. But that's what  
22 really happened. So there's no change in theory going on here.

23 With regard -- and I agree with the Court's  
24 interpretation to the rule of completeness and translation. I  
25 would just, if the Court will indulge me, I'd like to give some



1 law.

2 THE COURT: That's always a good --

3 MS. KANOF: Well, I have this planned, so if the Court  
4 will indulge me.

5 UNKNOWN SPEAKER: Your Honor, may I say something  
6 before to make a little correction here.

7 The Government is not saying that all contracts  
8 entered in Mexico are by corruption. I don't want to believe  
9 that. I don't want somebody to go out and report that the  
10 United States is taking that position, because I want to make  
11 that clear for the record.

12 MS. KANOF: I'm glad he said that, Your Honor. The  
13 majority of businessmen in Mexico are probably honest, but  
14 having prosecuted a whole lot of Americans for taking bribes  
15 for contracts here in El Paso, I didn't mean to imply that  
16 Mexico was the only location or that that was the only way they  
17 did business, so I do apologize if I left that impression.

18 Your Honor, in talking about the rule of completeness,  
19 Whitmore liked to (indiscernible) McCormick, would quote, could  
20 hold up the Bible and say, there's no God, because in the Bible  
21 there's a quote that says there's no God. But rule of  
22 completeness, the believer would have entitled -- be entitled  
23 to give the entire quote, which is the fool hath said in his  
24 heart there's no God.

25 But what the Fifth Circuit says about that it is

1 incumbent on the opposing party if they think the portion that  
2 has been placed into evidence is not complete, well, could  
3 have -- or confuse the jury, they have an obligation. And that  
4 obligation according to *U.S. v. Garret*, 716 F.2d 257 is that  
5 they must show -- or at least a better case, *U.S. v. Crosby*,  
6 713 F.2d 1066 -- they must show precise that the portion they  
7 wish to admit at the time encourages completeness, that it is  
8 relevant, that it will assist the jury and that -- and also  
9 that it's admissible, that --

10 And in this particular case, I will tell the Court one  
11 of the reasons the Government did not translate everything, and  
12 one of the reasons that they only proposed to put in those  
13 parts that are relevant is because unlike the United States,  
14 Mexico still uses lots of legal jargon that is meaningless  
15 pages and pages of irrelevant stuff, explain who people are,  
16 "whereas" and "therefore" and all of that kind of stuff, we  
17 could not afford the money to translate. But in addition to  
18 that, in this particular case in these documents, the  
19 Government believes that putting the whole document in would  
20 actually confuse the jury more. So the government in its  
21 case-in-chief chose to provide those documents and translate  
22 those documents and translation that would in our opinion prove  
23 the Government's case and assist the jury.

24 The defense can stop us when we put that in and show  
25 the Court it will confuse the jury in -- if that's all in

1       there, this portion needs to be in here, too, and we've  
2       translated it and it needs to go in right now so as not to  
3       confuse the issue and it's relevant to the issue and we, of  
4       course, have no objection to that because it's consistent.

5               I do have case law on the translation issues as well,  
6       but I think --

7               THE COURT: Case law on the translation issues?

8               MS. KANOF: -- on whether or not we have to translate,  
9       we don't.

10              THE COURT: Oh.

11              MS. KANOF: But the Court has already -- I have many  
12       cases from every other that agrees with the Fifth Circuit. The  
13       Fifth Circuit is pretty strong about not having a requirement  
14       to put in the whole document and it basically is incumbent upon  
15       the true believer.

16              THE COURT: Did they talk about the burden of  
17       shifting?

18              MS. KANOF: There's no burden of shifting, Your Honor.  
19       Never saw a burden of shifting in any of the cases.

20              Does the Court have any other issues that need to be  
21       addressed? I did want to give them a couple of cases and *U.S.*  
22       *Branch*, another case -- it's another Fifth, 91 F.3d, 699, and  
23       opposing party has to provide relevancy, but they have to do it  
24       with, quote, particularity, relevance, necessity and explain  
25       how it would be required in that place in context so that the

1 jury can understand it.

2 THE COURT: But those cases are limited to the rule of  
3 optional completeness.

4 MS. KANOF: They are.

5 THE COURT: They can always, but it in their case in  
6 chief.

7 MS. KANOF: They're all Rule 106.

8 THE COURT: Yeah. Okay.

9 MS. FRANCO: Your Honor?

10 THE COURT: Are we in a big hurry to try this case?  
11 If the Public Defender wants time to translate the "but fors"  
12 and "heretos"...

13 MS. KANOF: My only concern, Your Honor, is speedy  
14 trial. This will be the ninth --

15 THE COURT: They did waive speedy trial, right?

16 MS. FRANCO: Yes, Your Honor. If we've -- if I could  
17 let Mr. Hanshaw take over, because I'm --

18 THE COURT: Oh, yes. I'm sorry. And thank you,  
19 Ms. Franco, for being here and offering your voice for what you  
20 could. Hope you feel better.

21 MR. HANSHEW: Thank you, Judge. I'll be the voice  
22 from now on.

23 I think the last question is really relevant here  
24 which is I did confer with Mr. Delgado myself about the issues  
25 that have come up in the last week which -- and to get his

1 response in terms of if he would have any opposition to  
2 continue with the trial in this case. He indicated he would  
3 not. He would waive speedy trial consideration. And I just  
4 wanted to just quickly summarize.

5 In total, I think that the issues in the last two  
6 weeks that have come up at the forefront is this issue about  
7 whose obligation it is to provide the interpretation -- the  
8 English interpretation, certified, no less, of this contract.  
9 And I won't repeat everything Ms. Franco indicated, but in  
10 terms of the rule of completeness, yes, I'm not disagreeing  
11 with the Court's commentary about, you know, how that happens.  
12 Obviously, the direct party puts their evidence, the opposing  
13 party can then say you need to include, you know, "X" "Y" and  
14 "Z" to make that complete, and that is the process.

15 The wrinkle in this is that frankly I think our  
16 offices have been trying, and one of the only things we've been  
17 able to work out in total of this is the passing of the  
18 information in terms of translations. And the Court will  
19 remember Ms. Kanof, not the sentencing in the last case, the  
20 last hearing in this case, even acknowledged presentencing  
21 concerns about later disclosures of translations. She  
22 indicated we'll be providing those as we go. For better or  
23 not, we took that to understand that there would be  
24 translations of all of the pertinent documents.

25 It's undisputed from the Government that this contract

1 and the anexos (Spanish), the annexes that are attached, which  
2 are incorporated by reference and the specifications which even  
3 Ms. Kanof raised earlier, complete and make up what is the  
4 contract.

5 THE COURT: When did the defendant get the  
6 translations?

7 MR. HANSHEW: We received -- oh, gosh, Judge.

8 THE COURT: What I don't want is for both of you to be  
9 spending money on translating the entire document. It makes  
10 sense to receive the portion she wants and then you translate  
11 the portion you want.

12 MR. HANSHEW: And that is exactly the point where we  
13 got to last week, which is -- the short -- and I'll take  
14 responsibility for this. I should have probably long ago said,  
15 please identify which specific ones you're going to provide and  
16 by what date that was going to happen. Instead what occurred  
17 was last week, Ms. Franco spoke with Mr. Gonzalez to confirm  
18 that there would be the rest of this, what we thought the rest  
19 of the translation was coming, and we were told that was the  
20 end of the translations, which obviously caused this, you know,  
21 this rift and great concerns on our parts and the back and  
22 forth about whose responsibility it is.

23 The documents as they are shown, that's part of it,  
24 but the specifications are part of it. And I can, just by  
25 visual -- I couldn't give you a page count -- but we have in

1 our office two binders full. And I know in the conversations  
2 between Mr. Gonzalez and Ms. Franco, you know, there was visual  
3 discussions of documents, you know, knee high, plus it's the  
4 type of thing that had not been certified -- hadn't received  
5 certified translations, grave concerns of economics, you know.

6 From the Government's perspective, they indicated that  
7 DOJ was not going to do -- spend the resources to do that. You  
8 can imagine if DOJ is concerned about their resources, our  
9 little public defender office in a district, you know, is  
10 concerned about the finances.

11 That being said, we're obviously at a point now, and  
12 that's why I raise it with this Court that -- to take the  
13 Court's guidance, it appears that what the Court is indicating  
14 today that, you know, it would be -- the burden would be on us  
15 to do that, which, you know, we will -- we'll do if that's  
16 what's required, but it's going to take time. These  
17 translations take time. I know we've seen from the Government,  
18 and Ms. Kanof explained last time, the translations will be  
19 coming as time passed, because it took some time and effort.  
20 It's going to take us time to do that as well.

21 So in terms of asking for a continuance and speedy  
22 trial concerns, that's the first and foremost problem we have  
23 in front of us.

24 The other issues have been the submission of *Brady* and  
25 *Giglio*. And to be clear about this so that there's -- I'm not

1     implicating bad faith on the Government, that component of it,  
2     but the Government complied with the Court's scheduling order,  
3     which was to provide *Brady, Giglio* two weeks before trial was  
4     the scheduling order on May 9th. We received letter  
5     information attached to that from Mr. Gonzalez detailing that  
6     information.

7             What had been accompanying that over those few weeks  
8     as well, as soon as Mr. Gonzalez noticed his appearance in this  
9     case, had been their continuing discovery obligations is, I  
10    think they word it, they were meeting with witnesses and  
11    providing new information. And this -- it wasn't just random  
12    information. It wasn't extrinsic. It wasn't irrelevant  
13    information. It was, for example, the chief attorney for CFE  
14    that's involved in this was investigated and found in the wrong  
15    by Mexican government agencies as it relates to this contract.  
16    It was, for example, last week, finding out that Mr. Pimentel  
17    had recently been interviewed and provided this information  
18    that their star witness, Mr. Gireud, that we heard and talked  
19    about and was emotional about how closely he felt to this  
20    person, lied and was actually at a meeting by himself with Mr.  
21    Pimentel, summons Mr. Delgado to set up a bribe in this  
22    contract. So this isn't just, oh, by the way, information  
23    about some, you know, random letter. This is information that  
24    impeaches and in fact implicates their witness in that crime  
25    that relates specifically to the contract that's at the heart



1 of this case. The heart of their case is about what  
2 Mr. Delgado was authorized or not to do in terms of this  
3 contract and obligations of the various parties. So this is  
4 the type of information we get. We get as you heard that  
5 Mr. Pimentel is out of state moving and we have a phone number.  
6 We don't know if he's represented by counsel.

7 And I think the Court raised an excellent question.  
8 Should the Court appoint counsel? I frankly would ask that the  
9 Court do that, because I don't want to get involved in another  
10 Gireud, you know, escapade here. We don't want to speak to  
11 someone who isn't represented by counsel, that's why we reached  
12 out to Mary Stillinger, who received court materials, talked  
13 about accepting service. And she said, well, I haven't talked  
14 to him for so long. You know, I don't think I'm his lawyer  
15 anymore. So here's Rene Ordoñez, otherwise, our office doesn't  
16 want to and I am sure the Court wouldn't want me to unless it's  
17 compelled.

18 So by grave contrast, I can tell the Court that  
19 dealing with Matt Herrington, the attorney for FPSA on this  
20 case, which I did on a regular basis throughout their  
21 submissions to this Court, was a pleasure. It was the normal  
22 process. It was two lawyers meeting, conferring, not once to  
23 be clear to clarify something, not once did he in all of  
24 discussions we have indicate that he was going to file a motion  
25 to quash. In fact, the only issue that even remotely got to

1 that was questions about attorney/client privilege, particular  
2 areas addressed there we worked that out. And you saw by the  
3 cover letter attached, this is how that process works, a lawyer  
4 to lawyer, meeting, conferring, and they submit the documents  
5 to the Court.

6 But again, I think as far as Mr. Pimentel is I think  
7 he should have an attorney. His statements implicate him in a  
8 crime. His statements implicate their star witness is a  
9 client. He also -- Ms. Kanof left out his statements -- not  
10 only do they implicate Mr. Gireud, their star witness as being  
11 involved in a crime with him with Mr. Delgado at that time, but  
12 we received the *Brady, Giglio* from the Government, which are  
13 the statements that Mr. Gireud had been giving to the  
14 Government and none of that included admissions by Mr. Gireud  
15 that he had been involved in the bribe scheme with  
16 Mr. Pimentel. So it appears he has also broken whatever  
17 agreements he has with the Government.

18 So again -- and this is the type of information that  
19 we now as of Friday have a phone number for that we have to  
20 investigate, reach out to, perhaps subpoena this individual and  
21 go through this process, which makes again a Monday trial date  
22 an impossibility for us in this case. And that is the issue  
23 that has been partly -- I think, we have reached the end of the  
24 road, because hopefully the Government at this point, and what  
25 they've done in the last two weeks in the run of this trial has

1 given us everything now, now that they've spoken with this  
2 witness, received new documents, new testimony and statements  
3 from them. And they have been, you know, as Mr. Gonzalez has  
4 been diligently, you know, providing to Ms. Franco and myself,  
5 that part has been done, but it's only fair and due process at  
6 this point that we be allowed to actually investigate and  
7 prepare that information for a trial which is an impossibility  
8 for Monday, Judge.

9 THE COURT: I'm not taking up a motion to continue  
10 right now. This was just a status hearing. We'll take up all  
11 of these motions on Thursday and give everybody a chance to  
12 subpoena witnesses, put on whatever you want. We'll be here  
13 all afternoon and night to get that done.

14 I'll tell you what my impressions are, which are  
15 subject to change. These are not set in concrete. My first  
16 impression is I probably will grant the continuance based on  
17 that. My first impression is I don't think that what happened  
18 here is so egregious that I would take that extraordinary step  
19 of removing a member of the other branch of government from  
20 this case. If there are any ethical or other criminal  
21 concerns, that's going to be somebody else's issues. It's not  
22 mine, because it doesn't impact the fairness of the trial to  
23 your client. That's what I was primarily concerned about,  
24 whether there were any documents that were removed from the  
25 stack that was produced. That concerned me. I don't think

1 that's happened. I'll give you an opportunity to prove that it  
2 did happen at this hearing. My general impressions, what I  
3 heard, I'll probably grant you a continuance. I can be  
4 convinced this is so egregious that I would have to remove all  
5 of the AUSAs from the Western district, but that's not my first  
6 impression.

7 MR. HANSHEW: I understand, Judge. One issue relates  
8 to the issue for Thursday on the motion to dismiss and  
9 disqualify. The only way we would be able to have witnesses,  
10 which would obviously be Mr. Gireud, the Government, its agent,  
11 would be through subpoena. Any subpoenas for the Government or  
12 its agents are subject to Touhy, which is a process that would  
13 take longer.

14 THE COURT: What's Touhy?

15 MR. HANSHEW: Touhy? It's a case. And it basically  
16 requires that there's more extended administrative process to  
17 get the approval from the Department of Justice on when you  
18 subpoena federal agents and/or prosecutors and also the issue  
19 with Mr. Fernando Gireud. I can reach out immediately to his  
20 new counsel, who I found out is his son's law partner, and ask  
21 if he'd accept service for subpoena, but I don't know if he  
22 would do that and/or if he would be available for Thursday.  
23 I'm putting it out there. I don't want to -- to happen  
24 Thursday and say, Judge, we're out this, but the Touhy process,  
25 the Government can speak better to how long that is, but it's

1 definitely not a two-day turnaround.

2 THE COURT: Ms. Kanof? I mean because, basically,  
3 that's going to force me to decide the continuance right now if  
4 having the hearing is going to take us beyond the trial date.

5 MS. KANOF: Your Honor, if I can also respond to a few  
6 misstatements made by Mr. Hanshew. We'll get a copy for the  
7 Court to put in evidence.

8 On July 16 of 2014, that's almost two years ago, the  
9 Government sent its first discovery letter. And we have  
10 receipts from FPD. We have practiced in this case -- in the  
11 past, the Government likes to notify (indiscernible) --  
12 meeting, potential agent, AUSA's case agent takes notes and  
13 commits these notes to writing. While these statements are not  
14 technically Jencks material, we have in the past permitted your  
15 client, former counsel, to read these. And other agent again  
16 memorialized interviews in the U.S. Attorney's office in  
17 advance of trial. We are extending that offer to you as well.

18 The letter goes on, but it includes two single-lined  
19 summaries of the first interview we had with Miller and  
20 Fernando Gireud. We extended that invitation two years ago and  
21 the defense never took us up on it. We extended an invitation  
22 for the defense to come over and look at records that were hard  
23 to copy like bank documents, and the defense never availed  
24 themselves to that invitation. We have many, many discovery  
25 letters, because it is Ms. Arreola's and my practice to do

1 that. We did it with Mr. Esper and Mr. Velarde, who did avail  
2 themselves in many cases.

3 This -- Mr. Hanshew seems to have the impression that  
4 Mr. Gonzalez came into this case and was providing them with  
5 things. No, that's not what happened. Ms. Arreola and I were  
6 providing them to Mr. Gonzalez to forward. He was just an  
7 intermediary on our behalf.

8 The attorney, Mr. Moreno Nunez, we didn't know he was  
9 going to be a witness. He came to El Paso a couple of weeks  
10 ago and immediately, and during that interview, told us not  
11 that he had -- what he told us is he had investigated an  
12 administrative proceeding in which they blamed him in 2014 for  
13 having been present at the opening of the bids and having not  
14 taken action to point out to them some irregularities in the  
15 bids. He said I'll send it to you.

16 He sent it to us. We sent it by e-mail immediately  
17 that day to defense counsel. There is nothing that we have  
18 provided them that we did not give to them within a day or  
19 maybe two days of what we received.

20 As far as talking to Mr. Gireud and Mr. Pimentel,  
21 defense counsel has turned due diligence into nefarious  
22 conduct. We didn't have to do any of that and they wouldn't  
23 have known. They didn't have to make a motion to extend and  
24 they wouldn't have known, but we did.

25 It's just very difficult -- Francisco Moreno Nunez is

1 not the chief attorney general for CFE. He is a subs --  
2 sub-deputy at the time, just happened to do some rough drafts  
3 and CFE offered him with knowledge. He's one of the few people  
4 that's still there. There's another attorney that we spoke  
5 with. He had some knowledge and he's also going to be a  
6 witness. He didn't have Spanish.

7 And then there's a substantive witness and we also  
8 told them his name is Buendia, that he's going to testify, none  
9 of which we had to do. We've been extremely open and we have  
10 every discovery letter, every receipt.

11 If this Court will remember, in its first motion the  
12 knee jerk reaction that we gave them so much material, and of  
13 course the Government provided the Court with the Bate stamped  
14 numbers provided two years before, but evidently the defense  
15 attorneys were unaware of what they had.

16 With regard to Mr. Hanshew's dealing with  
17 Mr. Herrington, the letter speaks for itself. Again  
18 Mr. Herrington provided Bate stamped numbers of things that  
19 defense counsel has had more than two years and violation 17(c)  
20 subpoena.

21 He -- the most interesting thing Mr. Hanshew said is  
22 that Ms. Franco said Mary Stillinger said she was not his  
23 attorney, and Ms. Franco -- Mr. Hanshew just said  
24 Ms. Stillinger said I don't even think I'm still his attorney  
25 or his lawyer. That's not even consistent with each other.

1 They want to call Mary Stillinger. I can only represent to the  
2 Court what she told the Government and that was that she was.

3 But Your Honor, the Government has no objection in the  
4 interests of truth and justice in the court system to a  
5 continuance. They do have an objection when both the actions  
6 of the Government are misrepresented as is Mr. Gonzalez was  
7 brought in because myself or Ms. Arreola had done something  
8 wrong, he was not, and as if the Government has not complied  
9 with their obligations, because they have.

10 THE COURT: Well, you know, when the zealous advocates  
11 meet in the well of the court, it often creates such friction  
12 that it seems much more important to the applicants than to the  
13 Court. The bar here at the bench somehow insulates the Court  
14 from those sort of engagements between the litigants, and I  
15 certainly -- I listen to advocates. I don't take a lot of that  
16 to heart to mean anything. Here's a zealous advocate  
17 representing their client to the -- we should be very grateful  
18 tries cases, because trials are starting to disappear, and I  
19 just -- I don't know any lawyers who spend all of the time to  
20 go to law school and getting barred that don't have a very  
21 basic desire to be at trial. And you-all are very lucky that  
22 you get to be in trial, because there's a lot of people, really  
23 smart lawyers, who don't get that opportunity. And I've had a  
24 lot of people come through my chambers, brilliant minds, that  
25 never get the opportunity to go to court much less trial. And



1 it's a great opportunity we have. So we shouldn't let the  
2 zealous advocacy destroy what is otherwise kind of a pleasure  
3 we all get to enjoy, those of us that get to participate in the  
4 courtroom.

5 Anyway, Mr. Hanshew, I didn't mean to interrupt you.

6 MR. HANSHEW: I'll close with the part that just to be  
7 clear as I said in my -- no way what I said to say that they  
8 have been acting nefariously. I actually opened with that.  
9 And my comments about -- just to be clear about Mr. Gonzalez,  
10 that's where it came from and I received it and I appreciated  
11 it.

12 And I appreciate the Court's comments. I'm very proud  
13 to be an officer of the Court. I know they are as well, Judge,  
14 and we all look forward to coming here and giving Mr. Delgado  
15 his constitutional right.

16 THE COURT: All right.

17 MR. HANSHEW: Thank you Judge.

18 MS. KANOF: I have a legal matter, Your Honor.

19 THE COURT: Mr. Garcia?

20 MS. KANOF: If you do plan on continuing the case,  
21 he's our speedy trial expert.

22 THE COURT: Is there a problem?

23 MS. KANOF: I don't know if there's a problem,  
24 although the defendant waives the -- may waive or is  
25 waivering --

1 THE COURT: I have no problem if you draft the order  
2 drafting an order for continuance.

3 MR. HANSHEW: I have no problem.

4 THE COURT: And Mr. Delgado, I'll ask you since you  
5 are here. Do you have any objection to the motion that I  
6 expect to get from your counsel that they move to continue the  
7 trial setting for next Monday, May 23rd?

8 DEFENDANT DELGADO: None.

9 THE COURT: And would you waive any speedy trial that  
10 you have with the statute?

11 DEFENDANT DELGADO: Yes.

12 MS. KANOF: We have witnesses under subpoena for  
13 Monday, Your Honor, and you know reservations and hotels and  
14 airplanes...

15 THE COURT: And I know that, too. I know that  
16 sometimes these continuances are a burden on the Government.

17 MS. KANOF: I'm not saying that -- I just wanted to  
18 know whether or not they should still be on standby.

19 COURT'S RULING

20 THE COURT: No. I'm going to grant the motion. I  
21 will grant the motion now so it's on the record. If you bring  
22 the order, I'll sign that order.

23 And I appreciate all of the hard work that you do on  
24 behalf of the Government.

25 Mr. Hanshaw, I always appreciate the hard work that

1 the public defender does and excellent work in representing  
2 their clients. It's a blessing to participate in trials where  
3 counsel is so competent on both sides. It's a nightmare if  
4 you've ever had to -- where that's not the case.

5 MS. KANOF: Your Honor, are you going to postpone the  
6 Thursday hearing to give --

7 THE COURT: We can. That way -- because I'm hearing  
8 Mr. Hanshew say I'm going to look up Touhy. I didn't realize  
9 the defendant had to ask permission of the Government to  
10 subpoena the Government.

11 MS. KANOF: Not -- basically they have to make a  
12 request to homeland security and they have to submit the  
13 questions they would ask the agent. We can probably hurry up  
14 that process and then they have to do the same if they're going  
15 to call myself or Mr. Gonzalez or Ms. Arreola to the Department  
16 of Justice. And then I think we can expedite -- Eddie  
17 Castillo, our civil attorney handles the request in my office  
18 and other requests in that that's what you want me to ask.

19 And with regards to the setting of the trial, Your  
20 Honor, we did communicate all of our conflicts or dates of  
21 rescinding a trial and our biggest concern is the case agent  
22 Josh Fry being -- went to the Secret Service to do protection  
23 detail for the -- and that is for the United States Presidency.  
24 He will be called intermittently and hopefully have the dates  
25 in advance of having to do that, but...

1 THE COURT: Should I just allow the two of you to  
2 agree on a date and just notify the Court?

3 MR. HANSHEW: Two months?

4 One, I think we can meet, confer on the Touhy subject  
5 and get that narrowed out and, two, meet on those dates. We  
6 can for sure have the date today with a proposed order.

7 Is that okay, Ms. Kanof?

8 MS. KANOF: (Nodding head affirmatively.)

9 THE COURT: A trial date and date for the hearing put  
10 on whatever --

11 MR. HANSHEW: Yes, Your Honor.

12 THE COURT: -- Touhy.

13 Anything else?

14 MS. KANOF: Nothing further.

15 MR. HANSHEW: Nothing further.

16 THE COURT: We are adjourned.

17 (Proceedings concluded at 11:21 a.m.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /S/KATHLEEN A. SUPNET  
Kathleen A. Supnet, CSR

September 7, 2018  
Date

KATHLEEN A. SUPNET, CSR